

1  
2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 05-44481

5 - - - - -x

6 In the Matter of:

7  
8 DELPHI CORPORATION,

9  
10 Debtor.

11  
12 - - - - -x

13  
14 United States Bankruptcy Court

15 One Bowling Green

16 New York, New York

17  
18 September 9, 2007

19 10:03 AM

20  
21 B E F O R E:

22 HON. ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE  
24  
25

**HEARING - Settlement Agreement**

**Transcribed by: Christine F. Clayton, PLS, CERT-299**

**A P P E A R A N C E S :**

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**BY: VICTOR MASTROMARCO, ESQ.**

1 P R O C E E D I N G S

2 THE COURT: Please be seated. Okay. Delphi  
3 Corporation.

4 MR. LYONS: Good morning, Your Honor. John Lyons on  
5 behalf of the Debtors Delphi Corporation and its affiliates.  
6 This is the 11th claims hearing, Your Honor, that we've had so  
7 far on these cases, and before I turn the podium over to -- to  
8 my partner, Mr. Hogan, I'd like to go through some of the  
9 stipulations that we are going to hand up after the hearing and  
10 also discuss some other claims matters with Your Honor.

11 THE COURT: Okay. So you're just going to follow the  
12 agenda?

13 MR. LYONS: I'm going to follow the agenda, Your  
14 Honor, until we get to the end, and then I'm going to talk  
15 about -- before we get to HE Services two other matters.

16 THE COURT: Okay.

17 MR. LYONS: First, Your Honor, and I'll move rather  
18 quickly since the stipulations are fairly noncontroversial.

19 The first item on the agenda is the claim relating to  
20 Buffalo Check Cashing. They asserted a non -- a priority claim  
21 for \$984. The party agreed to settle it as a nonpriority claim  
22 in the same amount.

23 THE COURT: Okay.

24 MR. LYONS: Item number two on the agenda is a claim  
25 originally held by Sanders Lead later sold to Golden Sacks.

1 Sanders Lead asserted a reclamation demand in the amount of  
2 \$78,000 and change. Subsequently, we agreed at a \$79,000  
3 figure. They also asserted an unsecured nonpriority claim in  
4 the amount of \$584,000 against DAS LLC. The parties have  
5 agreed to settle the claim against DAS LLC for a total amount  
6 of \$574,000, and Goldman is going to reserve the right to  
7 assert 80,000 of that amount as a reclamation claim.

8 THE COURT: Okay.

9 MR. LYONS: Those are -- but the amount will be  
10 settled at 574.

11 Agenda item number three relates to the claims of  
12 Timken US and its various affiliates. We reached an agreement  
13 with the three Timken entities that are subject of the proofs  
14 of claim.

15 The first proof of claim, 16499, was filed by Timken  
16 Company asserting an unsecured nonpriority claim in the amount  
17 of \$2,700,000 and change and an unsecured priority claim in the  
18 amount of 1.8 million and changes, and a secured amount in the  
19 amount of \$732,000 and change against Delphi.

20 The claim number 16499 was duplicative of a proof of  
21 claim number 14319, which was filed by U.S. Timken against  
22 Delphi asserting approximately \$2.8 million.

23 The parties have agreed to expunge 16499, but that  
24 the remaining claim, 14319, should be deemed -- should be  
25 deemed allowed or should be deemed to assert the amounts and

1 classifications asserted in proof of claim 16499.

2 Timken Company would be recognized as the holder of  
3 14319, and U.S. Timken has no right or interest in 14319. so  
4 it's really getting rid of a duplicate claim and changing the  
5 holder of the claim.

6 THE COURT: Okay.

7 MR. LYONS: And we have a stipulation to that effect  
8 for Your Honor.

9 Item number four is the claim of Flow Form Limited.  
10 Here the claimant asserted a secured claim in the amount of  
11 pound sterling 225,000 and change. Pursuant to the letter  
12 agreement -- and that relates to proof of claim 14244 --  
13 pursuant to a letter of agreement the parties reached on  
14 February 13th, that claim will be disallowed and expunged in  
15 its entirety.

16 There was a prepetition wire transfer that was, in  
17 essence, an overpayment to this -- to Flow Form and the debtors  
18 have agreed to apply 199 pounds sterling of the wire transfer  
19 to satisfy all pre- and post-petition claims of Flow Form, and  
20 Flow Form has agreed to repay the debtors 211,000 pounds  
21 sterling. So we have a stipulation for Your Honor to review on  
22 that.

23 There is no release in that -- in that document, but  
24 it's just more of a -- we overpaid them prepetition and we're  
25 going to apply it to -- to get rid of both pre- and post-

1 liability.

2 THE COURT: Okay.

3 MR. LYONS: Agenda item number five relates to the  
4 claim of Schulte & Company, GMHB. Here Schulte asserted a  
5 claim -- a nonpriority unsecured claim in the amount of 189,000  
6 euros against Delphi. The parties have agreed to settle that  
7 claim and allow \$147,000, basically the currency exchange rate,  
8 against DAS LLC, so we have a stipulation to that effect.

9 Agenda item number six, Free Skill Semiconductor,  
10 Inc., the claim -- claimant here initially asserted an  
11 unsecured nonpriority claim of 6.5 million against DAS LLC.  
12 The parties have agreed to settle this claim for the following  
13 method. The Debtors will allow a general unsecured claim in  
14 the amount of \$6.4 million and change against DAS LLC and then  
15 another general unsecured claim of \$145,000 in the estate of  
16 Delphi Mechatronic Systems, LLC. This agreement actually  
17 relates to a contract assumption agreement that we had worked  
18 out with them. They were actually owed a lot more prepetition,  
19 but this is the remaining residual payment owed to Freescale  
20 under that agreement.

21 THE COURT: Okay.

22 MR. LYONS: And we have a stipulation to that effect.

23 Item number seven on the agenda is the claim of SFS  
24 Intec, Inc., and it relates to proof of claim number 1216. The  
25 Claimant, originally a unsecured nonpriority claim of \$48,000

1 and change against Delphi Corporation. The parties have agreed  
2 to settle it for \$41,000 against DAS LLC.

3 THE COURT: All right.

4 MR. LYONS: Agenda item number eight, a claim filed  
5 by Marketing Innovators International, Inc., and Liquidity  
6 Solutions, its assignee, relates to proof of claim number 4387.  
7 Claimant initially asserted an unsecured nonparty claim for  
8 \$15,000 and change, and the parties have agreed to settle and  
9 allow that claim in that same amount.

10 THE COURT: Okay.

11 MR. LYONS: Agenda item number nine is a claim filed  
12 by NEC Electronics, later sold to JP Morgan Chase, relating to  
13 proof of claim numbers 12394 and 16368. The original claim,  
14 12394, in the amount of 9.7 million and change was asserted as  
15 an unsecured nonpriority claim against DAS LLC.

16 Claimant also asserted proof of claim number 16368 in  
17 the amount of \$9.9 million and change against Delphi Corp. The  
18 parties have agreed to settle the claims allowing claim 16368,  
19 again, the \$9.9 million claim against Delphi, in the amount of  
20 \$9.5 million and change against DAS LLC and disallowing and  
21 expunging 12394 in its entirety.

22 The Claimant has reserved the right to seek priority  
23 status for 3.4 million of the claim as -- on the basis it is a  
24 valid reclamation claim.

25 THE COURT: When you have an agreement, as with this



1 one and one of the earlier ones, that they're reserving their  
2 right to seek a reclamation claim, is there a deadline for  
3 that? I forget. Are there reclamation procedures? Is  
4 there --

5 MR. LYONS: Actually, it's one of the items I was  
6 going to discuss at the end of the agenda, Your Honor, but --

7 THE COURT: Okay.

8 MR. LYONS: -- under the procedures, there is a --  
9 there's a point in time where we need to come back to Your  
10 Honor to have a determination as to the validity of the  
11 reclamation claim. The Debtors have reserved a number of  
12 global defenses, and one of the global defense is the existence  
13 of the prepetition lender's lien on all the inventory and  
14 collateral, we believe, is a complete defense. And what we  
15 were going to propose to do is to -- is to actually file a  
16 request that it change to the reclamation procedures order. In  
17 connection with the plan, we were going to offer them the  
18 ability to just take the plan consideration on a -- you know,  
19 as a general unsecured claim, and waive the reclamation  
20 priority portion.

21 If they do want to contest it, then we would have --  
22 we would come back next year and -- and ask Your Honor to take  
23 a look at the global defense.

24 THE COURT: Okay. So you're going to give people the  
25 chance to look at the plan, look at their treatment under the

1 plan were they just to have an unsecured claim --

2 MR. LYONS: Yes.

3 THE COURT: -- and then -- and then give them fair  
4 notice as to an election, basically, as to whether they want to  
5 choose -- not an election pursuant to a planned procedure, but  
6 just a choice as to whether they want find out reclamation or  
7 not.

8 MR. LYONS: Right, because --

9 THE COURT: Okay.

10 MR. LYONS: -- if they waive their -- their -- you  
11 know, their -- their -- you know, priority -- administrative  
12 priority portion of the claim, then we can allow it, they can  
13 get paid for --

14 THE COURT: Right.

15 MR. LYONS: -- plan consideration right away --

16 THE COURT: So the reclamation procedures order  
17 currently doesn't set a specific deadline, it just -- it just  
18 contemplates a further step in the process where the -- the  
19 Debtor will -- will flag these issues?

20 MR. LYONS: Yes.

21 THE COURT: Okay.

22 MR. LYONS: Yes. So all these reservations of rights  
23 are subject to all of our global defenses.

24 THE COURT: Okay.

25 MR. LYONS: Agenda item number ten, the U.S. Customs

1 and Border Protection claim in the amount of 16202. This is an  
2 liquidated claim filed against Delphi Diesel Systems  
3 Corporation. The parties have agreed to disallow and expunge  
4 this claim in its entirety.

5 Agent item number 11 is the claim of New York State  
6 Department of Taxation and Finance. This involves two claim  
7 numbers; 9710 and 9711. 9710 asserts an unsecured priority  
8 claim of \$4,300 and change and an unsecured nonparty claim of  
9 \$750. 9711 asserts an unsecured priority claim of \$2,600 and  
10 change, and nonpriority claim of \$250. The parties have agreed  
11 that both claims will be disallowed and expunged in their  
12 entirety.

13 THE COURT: Okay.

14 MR. LYONS: Agenda item number 12, this is a -- three  
15 proofs of claim filed by Bank of America who is -- who is the  
16 aircraft lessor to the Debtors. These claims are all in the  
17 amount of \$38 million and change, so there are three claims for  
18 \$38 million a piece.

19 Claim number 11470 was filed against DAS LLC. Claim  
20 11457 was filed against Delphi Automotive Systems -- Delphi  
21 Automotive Systems Human Resources, LLC, and claim 11317 was  
22 filed against Delphi Corporation.

23 We believe these are protective in nature. We did  
24 file a notice of sufficiency hearing with respect to these  
25 claims. Since that time, we were able to negotiate with Bank

1 of America, and they've agreed to withdraw the claims with  
2 prejudice. However, in the event that we reject the aircraft  
3 leases, they'll be automatically reinstated.

4 THE COURT: Okay.

5 MR. LYONS: So that cleans up quite a bit of --  
6 amount of claims.

7 Agenda item number 13, a claim filed by American  
8 Casualty Company. American Casualty issued certain surety  
9 bonds for Customs' duties. The Claimant asserted a claim of  
10 \$44,080,000 as a priority contingent claim. Again, we believe  
11 this was protective. We since negotiated with American  
12 Casualty and they have agreed to have that proof of claim,  
13 2534, deemed withdrawn without prejudice; however, if Customs  
14 should call upon the bond, American Casualty will retain the  
15 right to file for an assignment of any proof of claim filed by  
16 Customs. We don't think there's any exposure to Customs, Your  
17 Honor, but nonetheless, they wanted to protect their rights, so  
18 the claim will be withdrawn.

19 THE COURT: All right.

20 MR. LYONS: Agenda item number 14, the claim of  
21 Grigolet Company. The Claimant filed the claim in the amount  
22 of \$259,000 and change against DAS LLC. The parties have  
23 agreed to settle that claim in the amount of \$250,000, a  
24 reduction of 9,000 against DAS LLC.

25 Agenda item number 15 is the claim of Tyco

1 Electronics. Again, Tyco also entered into a contract  
2 assumption agreement so this deals with the residual claim. It  
3 relates to proof of claim number 10707. The original claim was  
4 in the amount of \$12 million. Since the -- in August the  
5 parties entered into stipulation that capped Tyco's claim at  
6 \$4.3 million. We have agreed to a further settlement cap with  
7 Tyco in the amount of 2.9 million and change, and that  
8 stipulation we would hand up to Your Honor at the end of the  
9 hearing.

10 THE COURT: All right.

11 MR. LYONS: With that, Your Honor, I will turn over  
12 the -- the podium to my partner, Al Hogan, who gets all the  
13 easy claims. That's it -- oh, oh, wait. Hold on one second,  
14 Al.

15 Actually, the items I wanted to talk to you about at  
16 the end of the agenda; we spoke about the reclamation  
17 procedures. We also are intending on filing an estimation  
18 motion with Your Honor to estimate contingent unliquidated  
19 claims --

20 THE COURT: For -- for voting or allowance? Or --

21 MR. LYONS: For -- to set distribution reserves under  
22 the plan and for distribution and voting.

23 Again, we have a certain number of unliquidated  
24 contingent claims that, you know, we believe require more of a  
25 summary estimation procedure than the claims procedures, you

1 know, the more thorough due process claims procedures that we  
2 have, you know, already had Your Honor approve. So it would --  
3 it would basically envision a more summary proceeding where the  
4 parties would put in brief with two declarations. You could --  
5 both parties could submit surresponses, but there wouldn't be  
6 any discovery and it'd be more of a summary --

7 THE COURT: Will this motion include claims that are  
8 already in the claim objection and allowance procedure track?

9 MR. LYONS: They may.

10 THE COURT: They may?

11 MR. LYONS: They may in certain instances.

12 Although -- yes, they may.

13 THE COURT: Okay.

14 MR. LYONS: That's -- that's they -- they would. So  
15 again, that would be coming down. Probably, we anticipate  
16 filing it tomorrow for hearing at the next omnibus hearing in  
17 September.

18 Also, we have a number of responses to an objection  
19 on late claims. We filed an omnibus objection with respect to  
20 claims that were not filed by the bar date. There are quite a  
21 few and we were going to deal with them. They're really not  
22 susceptible to dealing with in the claims procedures because it  
23 really just depends on what the -- you know, if there's  
24 excusable neglect or not and what the prejudice is. So what we  
25 would envision is, you know, we would put in a brief and we

1 would almost treat it like an omnibus claims matter where we  
2 would put in a brief, trying to set -- you know, segregate the  
3 claims in various buckets that have common issues, and then --  
4 and then have those heard at the claims hearing on  
5 September 28th. We would envision getting a brief well in  
6 advance of the hearing so Your Honor would have a chance to  
7 look at it. And the other parties, we'd give them an  
8 opportunity to file a response, if they would like. But it  
9 really would not be dealt with under the claims objection  
10 procedures since it really is just the limited issue of whether  
11 or not excusable neglect has been satisfied. It doesn't go to  
12 the merits of the claims itself. So we wanted -- you know, so  
13 we wanted to do that for the September 28th claims hearing and  
14 that more truncated kind of briefing schedule for those  
15 matters.

16 THE COURT: Okay. I don't know what else you have on  
17 -- on the 28th that you expect will be contested, but I'm --  
18 I'm meeting in Brazil with a group of Brazilian judges and  
19 flying back on the 26ht of September --

20 MR. LYONS: Okay.

21 THE COURT: -- which is like a 12-hour flight, so I  
22 won't have a whole lot of time to prepare. I'll have the 27th,  
23 I guess, but there are hearings on the 27th, also.

24 MR. LYONS: I --

25 THE COURT: So it's just a -- you know, if -- if it's

1 just those two things, the estimation hearing and the hearing  
2 on late claims, that shouldn't be a problem, but if there --  
3 there are other things in addition that you're contemplating  
4 will be disputed on the 28th, you may want to confer with  
5 people, because I may not get to everything.

6 MR. LYONS: The estimation motion would be returnable  
7 on the 27th, actually, at the omnibus hearing and --

8 THE COURT: Okay.

9 MR. LYONS: -- similar to the claims procedures, we  
10 wouldn't -- unless we'd consensually resolved the estimated  
11 amount, it would be automatically adjourned for further --

12 THE COURT: Well the esti --

13 MR. LYONS: -- notice, so there shouldn't be -- I  
14 wouldn't think, any major con --

15 THE COURT: Well, the estimation hearing is on -- on  
16 procedures, rights? It's not going to be --

17 MR. LYONS: Yes.

18 THE COURT: -- on the claims themselves.

19 MR. LYONS: And people who don't respond to our  
20 estimates because we're offering them to give us a compromise  
21 number --

22 THE COURT: Oh, so you're going to do both?

23 MR. LYONS: So we would do both, but there wouldn't  
24 be any -- any contested estimation --

25 THE COURT: All right. That's fine.



1 MR. LYONS: -- matter. So it'd really be late claims  
2 and it would be the day after the omnibus hearing.

3 THE COURT: Okay. That's fine.

4 MR. LYONS: Your Honor, that's all I have. Thank  
5 you.

6 THE COURT: Okay.

7 MR. HOGAN: Good morning, Judge. Al Hogan of  
8 Skadden, Arps, Slate, Meagher & Flom, LLP, for the Debtors.  
9 I'm here this morning with my colleagues, Chris Connors and Amy  
10 Van Gelder with respect to the contested claim matter for  
11 claims number 837 of HE Services Company and 838 of Mr. Robert  
12 Backe, individually, conducted pursuant to this Court's claims  
13 objections and procedures order.

14 Also, in court today, he did make an appearance, but  
15 I do want to introduce him, is Delphi in-house litigation  
16 counsel, Mr. Jim Darrien (ph) is here with us today as well,  
17 and we have our three declarants who will -- we'll get to a  
18 little bit later in the -- in the morning, I suspect.

19 Judge, I know the parties have submitted extensive  
20 briefing in this matter. Typically, we don't conduct opening  
21 statements. Unless Your Honor has any questions, I'll save all  
22 comments, as brief as they maybe, at the end for the end. If  
23 you have no questions, I would see if you -- willing to  
24 entertain any opening remarks from Mr. Mastromarco. Other than  
25 that, I'd suggest we proceed to the evidence.

1 THE COURT: Okay. No, I've read the parties'  
2 supplemental responses or amended supplemental responses, so my  
3 preference would be right -- to move right to the evidence.

4 MR. MASTROMARCO: Your Honor, Victor Mastromarco on  
5 behalf of HE Services and Mr. Backe.

6 I don't -- I'm -- I don't pretend to be, you know, an  
7 expert in New York bankruptcy procedure, but in my experience  
8 in federal cases that I deal a lot with with the U.S. District  
9 Court judges, for a hearing like this -- and the parties have  
10 attempted to resolve their differences before today. I -- I  
11 would suggest to the Court that possibly, with your help, and I  
12 don't know that you do that, all right, we might be able to  
13 bridge the gap here and get this thing resolved so we don't  
14 have to go forward and waste the Court's time this afternoon.

15 THE COURT: Well, is that a -- have you discussed  
16 this with -- with Delphi?

17 MR. MASTROMARCO: Yes. I discussed it with them. I  
18 haven't -- I talked to Mr. Hogan last night. I asked him -- I  
19 told him that I thought that possibly your involvement may be  
20 helpful. He did not agree to that at this point, but he hasn't  
21 said no either.

22 MR. HOGAN: Judge -- Judge, I think at this point,  
23 your involvement as a mediator while on -- I'm sure it'd be  
24 appreciated, I don't think that's an appropriate path for us to  
25 go down at this point in time. I think the parties, as I think

1 the Court can tell by the evidentiary submissions, it's been a  
2 lot of time preparing this hearing, a lot of depositions. The  
3 briefs are extensive. I think this comes down to whether or  
4 not there is a potential bargaining range.

5 As the Court is aware, we've laid out, in our papers,  
6 the fact that we believe in allowed claim, and some amount is  
7 warranted here based on the investigation of the invoices, and  
8 I just don't think the parties are going to be able to get  
9 there, and that's unfortunate, but I'm not sure that -- I'm not  
10 sure that we can do much more about that right now.

11 THE COURT: Well, I -- I have at times engaged in  
12 settlement conferences with parties. Although, I'm always  
13 somewhat uncomfortable doing that when it's on the eve of a  
14 trial that I'm going to be deciding.

15 If there is a particular point or a particular one or  
16 two points that the parties believe my preliminary views about  
17 might lead them to make a decision one way or another on  
18 settling, I believe I could be useful on that.

19 As in California and other states around the country,  
20 I -- I sometimes give preliminary rulings. I was not going to  
21 do that here because there are a number of issues involved, but  
22 if -- if there's a sticking point on a particular issue or one  
23 or two issues, I'm -- I'm happy to give you both a preliminary  
24 rule -- ruling on that, which is not binding and which you can  
25 persuade me -- that's -- it's otherwise over, but I think at

1 this point, given all the -- you know, the work that the  
2 parties have done already, it's only something focused like  
3 that that I think is probably worth doing. Maybe that's what  
4 you had in mind anyway is something particularly focused from  
5 my point of view. But, you know, it strikes me that the law  
6 here -- the underlying law is something that the parties  
7 generally agree on. It's just how that's applied to the facts,  
8 so I'm not sure that there would be such an issue, but you  
9 know, I leave it up to each of you. And if you want to spend  
10 five or so minutes discussing that, you can feel free to -- so  
11 I'll come back in about 20 of.

12 MR. MASTROMARCO: Okay, Judge. Thank you.

13 THE COURT: I mean I -- I saw you nodding to each  
14 other. If you really don't think that's productive, then I --  
15 then I won't -- I won't do it.

16 MR. MASTROMARCO: We'll -- we'll -- if the Court's  
17 willing to recess for a few minutes, I'll confer with Mr. Lyons  
18 and with Delphi and we'll see if that's --

19 THE COURT: Okay.

20 MR. MASTROMARCO: -- something we think will be  
21 productive.

22 (Off record)

23 THE COURT: Okay. We're back on the record in the  
24 Delphi HE Services matter.

25 MR. LYONS: Your Honor, John Lyons again for Delphi.

1 Well, during the short recess, Your Honor, we were  
2 able to reach settlement with HE Services and Backe, the terms  
3 of which I'll read into the record, but we would beg Your  
4 Court's indulgence to -- to actually get an order out, if we  
5 could, today. It's very simple and straight forward.

6 THE COURT: Okay.

7 MR. LYONS: And we're happy to sit and look at any  
8 drafts of it, but rather than going back to midtown, it would  
9 be a lot more efficient if we could just get it out right now.

10 THE COURT: All right.

11 MR. LYONS: But basically, Your Honor, the Debtors  
12 would -- would give an allowed claim in the amount of \$300,000  
13 to HE Services or -- or other entity or person designated by  
14 counsel for HE Services on or before October 31st, 2007.

15 So the claims register would be clear. It's a  
16 \$300,000 claim in favor of HE Services but if they gave us a  
17 change of beneficiary or whatever it would be by October 31st,  
18 we would honor that.

19 THE COURT: Okay.

20 MR. LYONS: And I believe Mr. Mastromarco wants to  
21 add something as well.

22 THE COURT: All right.

23 MR. MASTROMARCO: Yes, thank you, Your Honor.

24 I would indicate that, as I've discussed with the  
25 attorneys, that because this is an unusual situation as to the

1 way this is going, I have a -- an attorney fee lien, all right,  
2 that's involved here on the amount, and I just want that to be  
3 acknowledged on the record. I know that Mr. Backe knows that  
4 that exists; is that correct, Mr. Backe, if I may ask?

5 MR. BACKE: That's correct.

6 THE COURT: Okay.

7 MR. MASTROMARCO: All right. And thank you very much  
8 for your time.

9 THE COURT: All right. And so in all other respect,  
10 then the claim would be disallowed?

11 MR. LYONS: Yeah, the Backe claim would be expunged,  
12 and the HE Services would be given an allowed claim of \$300,000  
13 and the other, you know, the possible ability to change the --

14 THE COURT: The payee --

15 MR. MASTROMARCO: Let me -- let me correct, that, all  
16 right? We're not -- what we're going to do is we're going to  
17 have to designate, you know, what claim is going to be allowed,  
18 all right? We haven't agreed as to whether --

19 THE COURT: Whether it's Mr. Backe's claim or -- or  
20 HE Services?

21 MR. MASTROMARCO: Right.

22 THE COURT: That goes to the payee --

23 MR. LYONS: Yeah --

24 THE COURT: -- I believe.

25 MR. LYONS: -- I mean, Your Honor, I think that the

1 HE -- we need to have one claim. We can't have two hanging out  
2 there, so --

3 MR. MASTROMARCO: Well, I mean --

4 MR. LYONS: -- you can change -- you can change the  
5 bene -- you can change it to Backe, if you like, by  
6 October 31st --

7 THE COURT: As far as the --

8 MR. LYONS: We need --

9 THE COURT: -- allowed claim is concerned --

10 MR. LYONS: We need to have one allowed claim.

11 THE COURT: Yeah.

12 MR. LYONS: Not -- we can't have two hanging out  
13 there. We need to have one.

14 MR. MASTROMARCO: Well, I -- the reason -- I have my  
15 reasons for -- because I represent both, all right, and -- and  
16 I -- I'm agreeing to settle both for this amount. I want to be  
17 able to designate later. I don't want to have to dismiss the  
18 HE Services claim because I may end up --

19 THE COURT: All right.

20 MR. MASTROMARCO: -- with --

21 THE COURT: It seems to me you can allow the two  
22 claims in -- for an aggregate amount of \$300,000.

23 MR. LYONS: 150,000 each?

24 MR. MASTROMARCO: No.

25 THE COURT: Well, no, just -- just an aggregate

1 amount that -- that the amount -- the allowed amount of the two  
2 claims together would not exceed \$300,000. On a -- it's the  
3 same amount of money, isn't it?

4 MR. LYONS: Yes, but -- but the way the claims  
5 register works, Your Honor, if you have two \$300,000 claims --

6 THE COURT: No, no, that -- that wouldn't be the  
7 case. You cap the aggregate recovery.

8 MR. LYONS: Maybe -- maybe -- I may have a solution  
9 to this. Can I have two seconds to talk to --

10 THE COURT: That's fine. I -- I mean -- I understand  
11 counsel's point. I understand your point.

12 (Whispered conversation)

13 MR. LYONS: Okay. This may work, Your Honor. If we  
14 were to create a new proof of claim number, which we will call  
15 the HE Services/Backe Claim, an allowed claim in the amount of  
16 \$300,000, the other two claims would be expunged off the claims  
17 register, but you would have, then, that -- that --

18 THE COURT: That one allowed --

19 MR. MASTROMARCO: That would do it -- I think that  
20 would do it.

21 THE COURT: Okay.

22 MR. LYONS: Okay. So Your Honor, we've got --

23 THE COURT: But other than that, the settlement as  
24 laid out on the record is -- is what has been agreed to?

25 MR. MASTROMARCO: Yes, Your Honor.



1 THE COURT: Okay. And now that -- that portion has  
2 been agreed to as well.

3 All right. Let me say, I -- I appreciate counsel  
4 raising this settlement prospect at the beginning of the  
5 hearing. As you could tell, I -- I put a -- and I know you all  
6 have -- quite a bit of work into preparing for the hearing and  
7 because of that, I have no problem in issuing an order in  
8 respect of this settlement. I believe I have a very good sense  
9 of the merits of the claim and the defenses to the claim of  
10 both HE Services and Mr. Backe. And in light of my assessment  
11 of the various aspects of the HE Services claim, as well as  
12 Mr. Backe's claim, and the Debtors' objection to both of them,  
13 I believe this is a fair settlement in the best interests of  
14 the Debtors' estate and fair and equitable. That's the extent  
15 of my approval role under the Bankruptcy Code. The focus is on  
16 the Debtors' entry into this settlement, but I can tell you,  
17 Mr. Backe, that I believe this is fair also from HE Services  
18 and -- and your point of view based on my assessment of the  
19 merits. Obviously, something might have come out of trial that  
20 would change that assessment on the merits, but it could also  
21 have affected it the other way. So I believe that this is a  
22 fair settlement and -- and I'll approve it.

23 MR. MASTROMARCO: Thank you, Your Honor.

24 THE COURT: Okay. Now as far as getting the order  
25 done, do you have a laptop here? Are you going to draft one,

1 or do you want me to draft one back in chambers?

2 MR. LYONS: We -- do we have a -- we do have a  
3 laptop.

4 THE COURT: I mean I could do it either way.  
5 Sometimes it's more efficient for you to draft it and you have  
6 Mr. Mastroantonio [sic] right here, so you can, you know, go  
7 over it together. I would think it would be very brief --

8 MR. LYONS: Yes.

9 THE COURT: -- and simply approve the resolution of  
10 the claim objection as set forth on the record, and under  
11 363(b) and 9019.

12 MR. LYONS: I think we can get it done before noon,  
13 Your Honor, if not sooner.

14 THE COURT: All right. Well, I'll be around all day,  
15 so.

16 MR. LYONS: Thank you.

17 THE COURT: Okay. Thank you very much.

18 (Whereupon these proceedings were concluded at  
19 11:13 a.m.)  
20  
21  
22  
23  
24  
25

I N D E X

E X H I B I T S

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1	USW Home Avenue settlement agreement		6
2	USW Vandalia settlement agreement		6
3	Declaration of Kevin Butler		6
4	Declaration of Kent Lepret		6
5	Informational notice sent out to individual union members		6
6	Notice of debtors' motion at today's hearing		6
7	Affidavit of service		6
8	Blacklined order		6

R U L I N G

DESCRIPTION	PAGE	LINE
Debtors' entry into and performance of settlement agreements approved	9	10

C E R T I F I C A T I O N

I, Christine F. Clayton, PLS, CERT-299, court-approved  
transcriber, certify that the foregoing is a correct transcript  
from the official electronic sound recording of the proceedings  
in the above-entitled matter.

September 13, 2007

Signature of Transcriber

Date

Christine F. Clayton

Typed or printed name

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